IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Criminal Misc. Application No. 80/2001
(Old No. 1574 of 1994)

Gopal Das Madhok -- Petitioner.

Vs.

State and others ..Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri Lokendra Dobhal learned counsels for the petitioner and Sri Prabhakar Joshi learned A.G.A. for State and perused the record.

2- This is a petition under section 482 of the Code of Criminal Procedure (for short 'Code') against the impugned order dated 23.1.1993 whereby the learned Magistrate had accepted the final report filed under section 169 of the 'Code'.

3- The submission of the learned counsel for the petitioner is that on filing of the final report by the police no notice was issued to the petitioner-complainant with a view to afford him opportunity to file protest petition. It is now well settled that final report can not be accepted without giving opportunity to the complainant to file a protest petition against the same and there can be no doubt that the mandate of the law had been ignored in this case. In paragraph No.6 of the affidavit the petitioner had averred that he had not received any notice to file protest petition against the final report. The respondents have been served when the petition was pending before the Allahabad High Court and despite the vakalatnama had been filed on behalf of respondent No.2 no counter affidavit was filed to rebut the said averment of the affidavit of the petitioner-complainant. Considering this aspect it is evident that the compliance of the mandate had not been made in this case and, therefore, the impugned order dated 23-1-1993 can not legally be maintained.

4- In view of above there is merit in this petition and the same is therefore allowed. The impugned order dated 23.1.1993 is set aside. The learned A.C.J.M.-I , Dehradun is directed to accept the protest petition of the petitioner-complainant on record and then take decision regarding the final report submitted by the police after investigation of the case. The petitioner-

complainant is hereby directed to file the protest petition before the said Magistrate within a period of one month from today.

(Irshad Hussain, J.)

Dated: 1-12-03

ISB